

106TH CONGRESS
2D SESSION

S. 2744

To ensure fair play for family farms.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2000

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure fair play for family farms.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Play for Family
5 Farms Act of 2000”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “Secretary” means the Sec-
8 retary of Agriculture.

9 **SEC. 3. PRODUCER IMPACT ANALYSIS.**

10 (a) INTERAGENCY COOPERATION.—The Secretary
11 shall—

1 (1) monitor competitive conditions in the agri-
2 cultural economy;

3 (2) through designated personnel confer regu-
4 larly with designated personnel in the Department of
5 Justice and the Federal Trade Commission to dis-
6 cuss and review law enforcement and regulatory
7 matters related to competitive conditions in the agri-
8 cultural marketplace; and

9 (3) share legal, economic, and technical infor-
10 mation with the Department of Justice and the Fed-
11 eral Trade Commission, consistent with applicable
12 confidentiality restrictions, in order to facilitate each
13 agency's enforcement responsibilities and duties
14 under this Act.

15 (b) REVIEW OF CERTAIN MERGERS OR ACQUISI-
16 TIONS.—

17 (1) APPLICATION.—This subsection applies to a
18 merger or acquisition—

19 (A) with a value of more than
20 \$50,000,000; and

21 (B) involving a person in the business of
22 manufacturing an organic agricultural input for
23 sale to farmers or in the business of purchasing
24 livestock, poultry, or a basic agricultural com-
25 modity for wholesale resale either unprocessed

1 or processed, who files a notification under sec-
2 tion 7A of the Clayton Act (15 U.S.C. 18a).

3 (2) NOTICE.—The Department of Justice and
4 the Federal Trade Commission shall notify the Sec-
5 retary of all filings described in paragraph (1).

6 (3) PUBLIC COMMENT.—The Secretary shall—

7 (A) publish promptly in the Federal Reg-
8 ister a copy of each notice received under para-
9 graph (2);

10 (B) accept public comments on the pro-
11 posed merger described in such notice; and

12 (C) consider as part of the review required
13 by paragraph (4), such comments timely re-
14 ceived.

15 (4) REVIEW.—Not later than the expiration of
16 the review period provided in section 7A of the Clay-
17 ton Act (15 U.S.C. 18a), the Secretary shall—

18 (A) review the proposed merger or acquisi-
19 tion described in the notice;

20 (B) determine—

21 (i) the probable effects such merger or
22 acquisition would have on the prices paid
23 to producers of any livestock, poultry, or
24 basic agricultural commodities who sell to,
25 buy from, or bargain with 1 or more of the

persons involved in the proposed merger or acquisition;

(ii) impacts on producers on a regional basis;

(iii) past anticompetitive conduct of the companies under review; and

(iv) whether such merger or acquisition would—

(I) result in significantly increased market power for any of such persons; and

(II) increase the potential for anticompetitive or predatory pricing conduct by any of such persons;

(C) prepare a report—

(i) containing—

(II) the detailed findings made by the Secretary as a result of such review and such determinations; and

(II) an economic analysis of the Secretary regarding whether such merger or acquisition may substantially lessen competition or tend to create a monopoly; and

1 (ii) not including proprietary informa-
 2 tion; and

3 (D) transmit to the relevant Federal agen-
 4 cies and Congress and shall publish in the Fed-
 5 eral Register, simultaneously, a copy of such re-
 6 port.

7 **SEC. 4. ASSISTANT ATTORNEY GENERAL FOR AGRICUL-**
 8 **TURAL ANTITRUST MATTERS.**

9 (a) IN GENERAL.—There shall be established within
 10 the Department of Justice an Assistant Attorney General
 11 for Agriculture Competition, who shall be responsible for
 12 oversight and coordination of antitrust and related mat-
 13 ters which affect agriculture, directly or indirectly.

14 (b) APPOINTMENT.—The Assistant Attorney General
 15 for Agriculture Competition shall be appointed by the
 16 President subject to the advice and consent of the Senate.

17 **SEC. 5. STATUTORY TRUST FOR THE PROTECTION OF SELL-**
 18 **ERS OF LIVESTOCK TO MARKET AGENCIES**
 19 **AND LIVESTOCK DEALERS.**

20 Title III of the Packers and Stockyards Act, 1921
 21 (7 U.S.C. 201 et seq.) is amended by adding at the end
 22 the following:

23 **“SEC. 318. LIVESTOCK DEALER TRUST.**

24 “(a) FINDINGS.—Congress finds that—

1 “(1) a burden on and obstruction to commerce
 2 in livestock is caused by financing arrangements
 3 under which dealers encumber, give lenders security
 4 interest in, or place liens on, livestock obtained by
 5 such persons by purchase in cash sales, or on inven-
 6 tories of or receivables or proceeds from such live-
 7 stock, when payment is not made for livestock; and

8 “(2) such financing arrangements are contrary
 9 to the public interest.

10 “(b) PURPOSE.—The purpose and intent of this sec-
 11 tion is to remedy such burden on and obstruction to com-
 12 merce in livestock and protect the public interest by cre-
 13 ating a trust for the benefit of unpaid cash sellers of live-
 14 stock.

15 “(c) DEFINITIONS.—In this section:

16 “(1) CASH SALE.—The term ‘cash sale’ means
 17 a sale in which the seller does not expressly extend
 18 credit to the buyer.

19 “(2) DEALER.—The term ‘dealer’ includes a
 20 market agency purchasing livestock on a commission
 21 basis, for all purposes under and related to this sec-
 22 tion.

23 “(3) TRUST CORPUS.—The corpus of a trust es-
 24 tablished under this section shall include the assets

1 of a dealer that are held for the benefit of all unpaid
 2 cash sellers of livestock—

3 “(A) including—

4 “(i) all accounts receivable and pro-
 5 ceeds derived from the sale of livestock
 6 purchased by the dealer in cash sales; and

7 “(ii) all livestock inventories of the
 8 dealer; and

9 “(B) not including—

10 “(i) livestock purchased by a dealer
 11 for its own account for feeding in a feedlot
 12 or on pasture; and

13 “(ii) livestock purchased by a bona
 14 fide third-party purchaser for value.

15 “(d) HOLDING IN TRUST.—

16 “(1) IN GENERAL.—The accounts receivable
 17 and proceeds generated from livestock purchased in
 18 a cash sale by a dealer, and the inventory of the
 19 dealer, shall be held by the dealer in trust for the
 20 benefit of all unpaid cash sellers of such livestock
 21 until full payment has been received by such unpaid
 22 sellers.

23 “(2) DISHONOR OF INSTRUMENT OF PAY-
 24 MENT.—Payment shall not be considered to have

1 been made if the seller receives a payment instru-
2 ment that is dishonored.

3 “(3) LOSS OF BENEFIT OF TRUST.—The un-
4 paid seller shall lose the benefit of the trust under
5 paragraph (1) unless the seller gives written notice
6 to the dealer and to the Secretary—

7 “(A) within 15 business days after the sell-
8 er has received notice that the payment instru-
9 ment promptly presented for payment has been
10 dishonored; or

11 “(B) within 30 days after the final date
12 for making payment under section 409.

13 “(4) SMALL ENTITY EXEMPTION.—Any dealer
14 whose average annual purchases of livestock do not
15 exceed \$250,000 is exempt from the provisions of
16 this section.

17 “(5) CATTLE FEEDING EXEMPTION.—Pur-
18 chases by a dealer of livestock for its own account
19 for feeding in a feedlot or on pasture shall not be
20 considered dealer transactions for the purposes of
21 this section.

22 “(6) RIGHTS OF THIRD PARTY PURCHASER.—
23 The trust established under paragraph (1) shall have
24 no effect on the rights of a bona fide third-party
25 purchaser who has purchased livestock from a dealer

1 for value, without regard to whether the livestock
 2 are delivered to the bona fide purchaser.

3 “(7) ANIMAL CARE PROVIDER EXEMPTION.—
 4 Nothing in this section shall affect the rights of an
 5 animal care provider created by statute or common
 6 law.

7 “(e) JURISDICTION.—

8 “(1) IN GENERAL.—The district courts of the
 9 United States shall have jurisdiction in a civil action
 10 by—

11 “(A) the beneficiary of a trust described in
 12 subsection (d)(1) to enforce payment of the
 13 amount due the seller from the trust funds; and

14 “(B) the Secretary, to prevent and restrain
 15 dissipation of a trust described in subsection
 16 (d).

17 “(2) NO EFFECT ON OTHER REMEDIES.—Noth-
 18 ing in this section shall limit or diminish in any way
 19 any other remedy available to a trust beneficiary or
 20 to the Secretary under this Act, any other law, or
 21 at common law, but the provisions of this section are
 22 in addition to such remedies.

23 “(f) DAMAGES.—If any dealer subject to this section
 24 violates any of the provisions of such section, the dealer
 25 shall be liable to the person injured thereby for the full

1 amount of damages sustained as a consequence of such
2 violation.

3 “(g) PENALTIES.—

4 “(1) IN GENERAL.—Whoever violates the provi-
5 sions of this section shall be liable to, and the Sec-
6 retary may assess, a penalty of not more than
7 \$10,000 nor less than \$1,000 for each such viola-
8 tion.

9 “(2) CONSIDERATIONS.—In determining the
10 amount of the civil penalty to be assessed under this
11 section, the Secretary shall consider the gravity of
12 the offense, the annual purchases of livestock by the
13 person involved, and the effect of the penalty on the
14 person’s ability to continue in business.

15 “(3) ENFORCEMENT.—If the person against
16 whom a penalty is assessed under this section fails
17 to pay such penalty, the Secretary shall refer the
18 matter to the Attorney General, who shall recover
19 such penalty by an action in the appropriate district
20 court of the United States.”.

21 **SEC. 6. ADDITIONAL RESOURCES FOR DEPARTMENT OF**
22 **JUSTICE ENFORCEMENT.**

23 There are authorized to be appropriated for each of
24 the fiscal years 2001, 2002, and 2003 such sums as are
25 necessary to the Department of Justice to provide addi-

1 tional staff and assistance for the Assistant Attorney Gen-
2 eral for Agriculture Competition to carry out the duties
3 of the position.

4 **SEC. 7. AUTHORIZATION FOR ADDITIONAL STAFF AND**
5 **FUNDING FOR THE GRAIN INSPECTION,**
6 **PACKERS AND STOCKYARDS ADMINISTRA-**
7 **TION.**

8 There are authorized to be appropriated such sums
9 as are necessary to enhance the capability of the Grain
10 Inspection, Packers and Stockyards Administration to
11 monitor, investigate, and pursue the competitive implica-
12 tions of structural changes in the meat packing industry.
13 Sums are specifically earmarked to hire litigating attor-
14 neys to allow the Grain Inspection, Packers and Stock-
15 yards Administration to more comprehensively and effec-
16 tively pursue its enforcement activities, especially through
17 regional offices.

18 **SEC. 8. GRAIN INSPECTION, PACKERS AND STOCKYARDS**
19 **ADMINISTRATION APPLICATION TO POUL-**
20 **TRY.**

21 (a) IN GENERAL.—The Comptroller General shall
22 conduct a study and make findings and recommendations
23 with respect to whether there are disparities in the Grain
24 Inspection, Packers and Stockyard Administration's ad-

1 ministrative authority with regard to the poultry, beef, and
 2 pork industries and how those disparities can be remedied.

3 (b) REPORT.—The Comptroller General shall submit
 4 a report to Congress on the study, findings, and rec-
 5 ommendations required by subsection (a) not later than
 6 1 year after the date of enactment of this Act.

7 **SEC. 9. UNENFORCEABILITY OF CONFIDENTIALITY**
 8 **CLAUSES IN LIVESTOCK AND POULTRY PRO-**
 9 **DUCTION CONTRACTS.**

10 Confidentiality clauses barring a party to a contract
 11 from sharing terms of such contract for the purposes of
 12 obtaining legal or financial advice, are unenforceable in
 13 livestock production contracts and grain production con-
 14 tracts (except to the extent a legitimate trade secret (as
 15 applied in the Freedom of Information Act, 5 U.S.C. 552
 16 et seq.) is being protected).

17 **SEC. 10. REPARATIONS FOR PRODUCERS HARMED BY**
 18 **PACKERS ENGAGED IN ANTICOMPETITIVE**
 19 **BEHAVIOR.**

20 (a) IN GENERAL.—The Grain Inspection, Packers
 21 and Stockyard Administration shall establish a trust fund
 22 (referred to in this section as the “trust fund”) for the
 23 benefit of farm producers harmed by packers engaged in
 24 anticompetitive behavior.

1 (b) DEPOSITS.—There shall be deposited in trust
2 fund 50 percent of the amounts received by the Grain In-
3 spection, Packers and Stockyard Administration from
4 fines and settlements resulting from actions taken against
5 packers engaged in anticompetitive behavior.

6 (c) PAYMENTS.—Amounts in the trust fund may be
7 used by the Secretary of Agriculture for payments to farm
8 producers that are harmed by packers engaged in anti-
9 competitive behavior to compensate those farm producers
10 for losses resulting from that harm.

